

[4910-13]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 108

[Docket No. 28978; Notice No. 97-12]

RIN 2120-AD45

Aircraft Operator Security

AGENCY: Federal Aviation Administration (FAA), DOT

ACTION: Proposed rule; reopening of comment period.

SUMMARY: This document announces the reopening of the comment period for a specific issue addressed in the Aircraft Operator Security notice of proposed rulemaking (NPRM), published in the Federal Register on August 1, 1997 (62 FR 41730). That document proposed to amend the existing airplane operator security rules, by revising certain applicability provisions, definitions, and terms; reorganizing the rules into subparts containing related requirements; and incorporating some requirements already implemented in air carrier approved security programs. The comment period is being reopened to provide another opportunity for the public to submit additional comments on the compliance program proposed in the Notice.

DATES: Comments must be received on or before September 24, 1999.

ADDRESSES: Comments on the proposed rule should be mailed or delivered, in triplicate, to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-200), Room 915-G, Docket No. 28978 800 Independence Ave., SW, Washington, DC 20591. Comments may also be sent electronically to the following

internet address: 9-NPRM-CMTS@faa.gov. Comments may be examined in Room 915-G between 8:30 a.m. and 5 p.m. weekdays except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Office of Civil Aviation Security Policy and Planning, Civil Aviation Security Division (ACP-100), Ann M. Zipser, Federal Aviation Administration, 800 Independence Ave., SW, Washington, DC 20591; telephone (202) 267-8058.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire on proposed § 108.103(b)(11) and (c)(6). Substantive comments should be accompanied by cost estimates.

Comments should identify the regulatory docket or notice number and be submitted in triplicate to the Rules Docket (see **ADDRESSES**). All comments received on or before the closing date for comments specified will be considered by the Administrator before taking final action. Comments received on the section specified above will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 28978." The postcard will be date-stamped and mailed to the commenter. Internet users may

reach the FAA's webpage at <http://www.faa.gov> or the Federal Register's webpage at http://www.access.gpo.gov/su_docs to access recently published rulemaking documents.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: (703) 321-3339) or the Federal Register's electronic bulletin board service (telephone: (202) 512-1661).

Background

The FAA is proposing to amend the existing 14 CFR part 108 to update the overall regulatory structure for aircraft operator security. On August 1, 1997, the NPRM, Aircraft Operator Security (part 108), was published in the Federal Register for public comment. The original comment period closed on December 1, 1997.

On April 21, 1998, the FAA announced the reopening of the comment period and two additional public meetings on the Notice (63 FR 19691). The second comment period closed on June 26, 1998.

The Notice proposed, among other things, to require that aircraft operators have a compliance program to ensure that persons with access to certain areas of the airport comply with the rules governing those areas.

Section 108.103(b)(11) and (c)(6) was proposed in Notice 97-12 as follows:

“§108.103 Form, content, and availability.

* * * * *

(b) The security program shall include:

* * *

(11) The procedures and curriculum of the training requirements under §108.227 of this part; and a security compliance program that specifies procedures the air carrier will implement to ensure persons with authorized unescorted access to critical security areas and restricted operations areas comply with §108.7 and §108.9 of this part, including revocation of unescorted access authority of persons that fail to comply with security requirements.

(c) Each air carrier having an approved security program shall:

* * * * *

(6) Implement a program to ensure that its employees and employees of contractors comply with the paragraphs (a) and (b) of § 108.103. The program's provisions shall include penalties to be imposed on individuals who fail to comply with paragraphs (a) and (b) of this section that are in accordance with the standards contained in its approved security program."

The FAA received a number of comments on this proposal, many of them not supportive. Some commenters interpret the proposal to mean that the aircraft operator would be required to enforce Federal regulations, and impose fines under the Federal statute. This is not what was intended. The FAA intends that the aircraft operator would have a specific program to ensure that persons for whom they are responsible carry out the requirements in part 108 and the relevant security program.

Further, the Notice did not specify a range of penalties that could be imposed, although the notice did address revocation of unescorted access authority. Often, effective programs use progressive disciplinary actions that include such corrective

measures as mandated retraining, counseling, and suspension or revocation of unescorted access authority.

Since the comment period closed, the FAA has become aware that there is increased concern regarding employee compliance with requirements governing unescorted access to secured areas. Accordingly, the FAA is reopening the comment period for this section to allow for additional comments on the need for compliance programs and how they might best be structured to promote compliance.

Issued in Washington, DC on August 4, 1999.

/s/

Quinten Johnson

Deputy Director, Office of Civil Aviation Security Policy and Planning.